IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR Nos.118 & 119 of 1990
Date of decision: 24.10.2006

The Commissioner of Income Tax, Patiala

....Petitioner

versus

M/s. HMM Limited, New Delhi

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Dr. N.L.Sharda, Advocate, for the revenue.

JUDGMENT:

Following question of law has been referred for the opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh bench, Chandigarh (for short, 'the Tribunal') arising out of its order dated 28.9.1988 in ITA Nos.991 and 992/Chandi/85, for the assessment years 1978-79 and 1980-81:_

> "Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in allowing extra shift allowance on tubewell by treating the same as 'plant and machinery'?"

The assessee is running milk plant and claimed extra shift allowance on tubewell installed in its factory. The same was initially not granted but on an application under section 154 of the Income Tax Act, 1961 (for short, 'the Act'), before the CIT(A), the assessee was held entitled to the said allowance.

The Tribunal upheld the said order following its earlier order in the cases of **Majestic Auto Limited,** ITA No.7/Chandi/88 dated 21.9.1988 and **Punjab Concast Steels Limited**, ITA No.575/Chandi/85 dated 28.9.1988.

Learned counsel for the revenue has not been able to show that the view of the Tribunal has, in any manner, been disturbed. Moreover, in

**CIT v. Saraswati Industrial Syndicate Limited**, (2001) 257 ITR 779, it was observed by this Court that the generator was integral part of plant and machinery. Following this view, we held electric transformers also to be part of plant and machinery in our judgment dated 19.4.2006 in ITR No.60 of 1988 **(The Commissioner of Income Tax (Central) Ludhiana v. M/s. Oswal Woollen Mills Limited, Ludhiana)**.

In the present case, the tubewell has been treated to be part of plant and machinery by the Tribunal. On the principles laid down, we are of the view that the Tribunal rightly held the tubewell to be part of plant and machinery of the assessee, who is running a milk plant.

In view of the above, the question referred is answered against the revenue and in favour of the assessee.

Reference is disposed of accordingly.

(Adarsh Kumar Goel)
Judge

October 24, 2006 (Rajesh Bindal)
'gs' Judge